



Signed: December 19, 2008

Leslie Tchaikovsky

LESLIE TCHAIKOVSKY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

No. 08-43015 TG
Chapter 13

JOHNNY F. ROBLES, KARINA V.
ROBLES,

Debtors.

MEMORANDUM RE THIRD AMENDED CHAPTER 13 PLAN

The Court has reviewed the Third Amended Chapter 13 Plan filed by the above-captioned debtors on December 13, 2008 and apparently not yet noticed for hearing. A hearing on the plan has tentatively been scheduled for February 18, 2009. It would be premature to make any ruling with respect to the plan at this time. However, the Court wishes to let the debtors and other interested parties know of its thoughts after reviewing the plan.

With respect to the provisions of 7.1, describing the proposed treatment of Saxon Mortgage, the Court would require the debtors to file an adversary proceeding to litigate the claims asserted. Moreover, the Court is unlikely to confirm the plan, permitting the debtors to alter the post-petition payment amount and interest rate

1 and directing the trustee not to pay the pre-petition arrearages,
2 simply because the debtors have filed an adversary proceeding
3 asserting such claims. The Court is likely to require a showing in
4 the adversary proceeding sufficient to sustain a preliminary
5 injunction enjoining foreclosure: i.e., that the debtors are more
6 likely than not to prevail on the claims asserted.

7 With respect to the provisions of paragraph 7.2, describing the
8 proposed treatment of American General, in accordance with Espinosa
9 v. United Student Aid Funds, 2008 WL 5158728 (9th Cir.), the debtors
10 may propose to strip off this second deed of trust on the ground that
11 it is fully unsecured by including this provision in their plan
12 unless American General objects to this procedure and requests that
13 the relief be sought by adversary proceeding. However, to preserve
14 this option, the plan must be served on American General in the same
15 manner as an adversary proceeding or contested matter: i.e., by
16 directing the mailed document to the attention of an officer,
17 director, or managing agent for American General.

18 If American General does not file an objection, the debtors must
19 file a declaration under penalty of perjury executed by someone
20 competent to testify as to the value of the real property, supporting
21 their contention that the second deed of trust is fully unsecured.
22 If American General files an objection and disputes this contention,
23 an evidentiary hearing would probably be required. Until this issue
24 has been resolved, the plan could probably not be confirmed.

25 END OF DOCUMENT
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COURT SERVICE LIST

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